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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

JULIE MARTIN, ) CASE NO. CV 06-05056 RZ  
Plaintiff, )  
vs. )  
MICHAEL J. ASTRUE, Commissioner )  
of Social Security Administration, )  
Defendant. )  
\_\_\_\_\_  
MEMORANDUM OPINION  
AND ORDER

This action challenges the denial of a November 2003 disability application. Previously, Plaintiff did receive such benefits, starting in March 1987, but her benefits ended in August 2002 when she was found to be no longer disabled. *See* Administrative Record (“AR”) 16. Plaintiff’s sole argument for reversal is that the Administrative Law Judge erred by “fail[ing] to properly evaluate all the relevant evidence” relating to mental impairment. Pl.’s Br. at 3-5. (The Administrative Law Judge did find that Plaintiff suffered “severe” physical ailments, namely obesity and asthma, but found no “severe” mental impairment. *See* AR 20. As noted below, however, it appears Plaintiff did not assert any mental impairments during administrative proceedings.)

The “evidence” to which Plaintiff points is two lines in a single-spaced, three-page Consultation Request report over the signature of one “Amkhong, MD,” a state agency physician, *see* AR 209, who saw Plaintiff on February 4, 2004 for “[a]lleged

1 impairments" listed as "[b]roken left ankle, asthma and hypertension." The cited entry  
2 reads as follows, in its entirety:

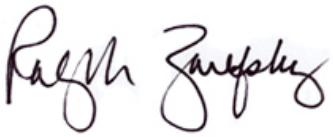
3  
4 Please review Dr. Khong's evaluation of 12-12-02 for learning  
5 disorder. Note IQ's of FSIQ-71, V-68, P-79[.]  
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7 AR 207. Plaintiff argues that this supplies evidence that she meets Listing 12.05C, which  
8 creates a presumption of disability when (a) the claimant's IQ is between 60 and 70 and  
9 (b) the claimant has another physical or mental work-related impairment. *See* 20 C.F.R.  
10 Part 404, Subpart P, Appendix 1, Listing 12.05C.

11 For at least two independent reasons, the Court disagrees. First, the cited  
12 report is not in the record. Although she is represented by counsel and has had years to  
13 locate and submit any such report by Dr. Khong, either to this Court or to the Defendant  
14 agency in an appropriate motion, no such IQ report has been added to the record. Second,  
15 even if the Khong IQ report exists as stated, the impact of a December 12, 2002 IQ report  
16 would be minimal here, because (a) Plaintiff filed her current claim nearly a year after the  
17 putative date of the report; (b) Plaintiff was found to be no longer disabled in August 2002;  
18 and (c) the reported IQ scores are borderline. In addition, the Court notes that Plaintiff's  
19 application is premised only on asthma, a broken left ankle and hypertension, not on the  
20 mental impairment she asserts here. *See* AR 54 (application). Plaintiff cannot validly  
21 contend that substantial evidence does not support the underlying non-disability finding,  
22 and the Court concludes that no legal error occurred as she asserts.

23 For the foregoing reasons, the underlying decision is affirmed.

24 DATED: September 21, 2007

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RALPH ZAREFSKY  
UNITED STATES MAGISTRATE JUDGE